

1 E. MARTIN ESTRADA
United States Attorney
2 CAMERON L. SCHROEDER
Assistant United States Attorney
3 Chief, National Security Division
NISHA CHANDRAN (Cal. Bar No. 325345)
4 Assistant United States Attorney
Cyber and Intellectual Property Crimes Section
5 1500 United States Courthouse
312 North Spring Street
6 Los Angeles, California 90012
Telephone: (213) 894-2429
7 Facsimile: (213) 894-0141
E-mail: nisha.chandran@usdoj.gov

8 Attorneys for Plaintiff
9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 HERBERT REDHOLTZ,
16 aka "badherb51@hotmail.com,"

17 Defendant.

CR No. 22-00433-MCS-1

GOVERNMENT'S RESPONSE AND
OPPOSITION TO DEFENDANT'S MOTION
TO COMPEL

MOTION HEARING DATE:
October 16, 2023, at 3:00 p.m.

18
19 Plaintiff United States of America, by and through its counsel
20 of record, the United States Attorney for the Central District of
21 California and Assistant United States Attorney Nisha Chandran,
22 hereby files its Opposition to Defendant Herbert Redholtz's
23 ("defendant") Motion to Compel (Dkt. 29) ("Motion").

24 This Opposition is based upon the attached memorandum of points

25 //

26 //

27

28

1 and authorities, the files and records in this case, and such further
2 evidence and argument as the Court may permit.

3 Dated: September 19, 2023

Respectfully submitted,

4 E. MARTIN ESTRADA
United States Attorney

5 CAMERON L. SCHROEDER
6 Assistant United States Attorney
7 Chief, National Security Division

8 /s/
NISHA CHANDRAN
9 Assistant United States Attorney

10 Attorneys for Plaintiff
11 UNITED STATES OF AMERICA
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

<u>DESCRIPTION</u>	<u>PAGE</u>
TABLE OF AUTHORITIES.....	ii
MEMORANDUM OF POINTS AND AUTHORITIES.....	1
I. INTRODUCTION.....	1
II. BACKGROUND.....	2
A. Factual Background.....	2
1. Defendant Sent and Received Child Pornography from a Hotmail Email Account.....	2
2. Search of Defendant's Email Account Revealed Hundreds of Images of Child Pornography.....	3
3. Search of Defendant's Home Led to Seizure and Forfeiture of Digital Devices.....	4
B. Procedural Background.....	5
1. Defendant Was Charged by State Authorities.....	5
2. Defendant's Case Was Adopted Federally and Government Produced Significant Discovery.....	6
3. Defendant Filed Motion to Compel Charging Information.....	7
III. ARGUMENT.....	8
A. Legal Standard.....	8
B. Defendant's Requests Regarding Charging Decisions (Requests #1-5) are Speculative, Irrelevant, and Inaccurate.....	11
C. Defendant's Request Regarding Agent Sampson (Request #6) is Irrelevant and Inaccurate.....	15
IV. CONCLUSION.....	16

TABLE OF AUTHORITIES

<u>DESCRIPTION</u>	<u>PAGE</u>
<u>Brady v. Maryland,</u> 373 U.S. 83 (1963)	2, 7, 9
<u>Giglio v. United States,</u> 405 U.S. 150 (1972)	2, 7, 9
<u>Kaley v. United States,</u> 571 U.S. 320 (2014)	8
<u>Pennsylvania v. Ritchie,</u> 480 U.S. 39 (1987)	10
<u>United States v. Bundy,</u> 968 F.3d 1019 (9th Cir. 2020)	9
<u>United States v. Fernandez,</u> 231 F.3d 1240 (9th Cir. 2000)	11
<u>United States v. Fort,</u> 472 F.3d 1106 (9th Cir. 2007)	9
<u>United States v. Henthorn,</u> 931 F.2d 29 (9th Cir. 1991)	15
<u>United States v. Lucas,</u> 841 F.3d 796 (9th Cir. 2016)	10
<u>United States v. Mincoff,</u> 574 F.3d 1186 (9th Cir. 2009)	10
<u>United States v. Stinson,</u> 647 F.3d 1196 (9th Cir. 2011)	10
<u>United States v. W.R. Grace,</u> 401 F. Supp. 2d 1069 (D. Mon. Nov. 23, 2005).	14
<u>Weatherford v. Bursey,</u> 429 U.S. 545 (1977)	8
 <u>FEDERAL RULES</u>	
Fed. R. Crim. P. 16.....	9

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Herbert Redholtz ("defendant") is charged with distribution, receipt, and possession of child pornography through his email account, badherb51@hotmail.com. Defendant now moves to compel the production of information relating to the government's sensitive, internal charging decisions that he speculates contains favorable information. Defendant's motion is premised on baseless speculation, including about witnesses and evidence that are not relevant to the charged case, about the reasons for the government's actions and decisions in connection with the instant prosecution. The government is not privy to the defendant's claims in his in camera filing, and thus cannot respond to those claims in this filing. But his motion makes clear that defendant is on a fishing expedition that this Court should reject.

The government is well-aware of its discovery obligations and has evaluated defendant's allegations. The government has produced more than 1,000 pages of discovery in this case, including a recent supplemental production in response to defendant's additional discovery requests. In response to this motion, the government also re-reviewed its files for any discoverable material responsive to defendant's speculative motion to compel and confirmed that it is in compliance with its discovery obligations, including under Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972), and its progeny. The government will continue to fulfill those obligations on an ongoing basis. Because defendant's demands seek internal Department of Justice charging information not required by law -- indeed, sensitive information that is protected from

1 disclosure for good reason -- defendant's motion to compel should be
2 denied. Any other result would have a detrimental effect on
3 prosecutorial work product, discretion, and deliberation.

4 **II. BACKGROUND**

5 **A. Factual Background**

6 **1. Defendant Sent and Received Child Pornography from a** 7 **Hotmail Email Account**

8 On October 17, 2014, defendant attempted to send an email to
9 another individual from his Hotmail account, badherb51@hotmail.com,
10 that contained a suspected child pornography image. In the email,
11 which had the subject line "Re: very talented," defendant wrote,
12 "suck daddys cock, you little whore," in response to previously
13 receiving an image depicting a nude prepubescent minor female who
14 appeared to be performing an oral sex act on an adult male.
15 Microsoft reported the email to the National Center for Missing and
16 Exploited Children ("NCMEC"), explaining that the user of
17 badherb51@hotmail.com had received a child pornography image and then
18 attempted to resend the received image.¹ NCMEC generated a Cyber Tip
19 report with the flagged email, associated the badherb51@hotmail.com
20 email address with defendant through defendant's public MySpace
21 account, and shared the tip with law enforcement. Homeland Security
22 Investigations ("HSI") Special Agent Kimmesia Sampson began
23

24
25 ¹ NCMEC functions as a clearinghouse for illegal child sexual
26 abuse images reported by U.S. electronic service providers and thus
27 has unique insight into identifying images of child sexual abuse
28 being distributed on the Internet. By using hash values, or unique
numerical identifiers assigned to digital files like a "digital
fingerprint" for the image, NCMEC uses technology to help enable
service providers to compare hash values associated with child
pornography images on their services with hash values that NCMEC
maintains of known images of child pornography.

1 investigating the NCMEC Cyber Tip and confirmed that the email
2 account was associated with an IP address registered to defendant at
3 his home in West Covina, California.

4 **2. Search of Defendant's Email Account Revealed Hundreds**
5 **of Images of Child Pornography**

6 On March 17, 2015, the Honorable Alicia G. Rosenberg issued a
7 federal search warrant for defendant's badherb51@hotmail.com email
8 address. Case No. 15-MJ-0469. Microsoft provided records in
9 response to that search warrant on March 22, 2015.

10 Agent Sampson began review of the email content from Microsoft,
11 but did not complete that review. Agent Sampson left the Los Angeles
12 HSI office and the case was reassigned to HSI Special Agent Derek
13 Baker in November 2019. Upon taking over the case, Agent Baker
14 reviewed the case file and status of the case and applied for a new
15 search warrant for the email records produced by Microsoft for the
16 badherb51@hotmail.com email address. Case No. 20-MJ-02510.

17 In the affidavit supporting the warrant application, Agent Baker
18 explained that, based on his review, it appeared that only
19 approximately 2,200 items from the Microsoft data had been previously
20 reviewed and categorized by Agent Sampson, but that more than 250,000
21 items remained uncategorized. Agent Baker further explained that,
22 based on the analysis of a HSI Computer Forensic Agent, the digital
23 evidence from 2015 appeared to be in the same condition at the time
24 of Agent Baker's application for a new warrant. On June 3, 2020, the
25 Honorable Maria A. Audero issued a new federal search warrant
26 authorizing SA Baker to review the email records produced by
27 Microsoft for defendant's badherb51@hotmail.com email address. Case
28 No. 20-MJ-02510.

1 As authorized by the warrant, Agent Baker reviewed the full
2 content of the email records produced by Microsoft for defendant's
3 badherb51@hotmail.com email address. From that review, Agent Baker
4 independently identified 448 unique images as child pornography, 109
5 unique videos as child pornography, 402 unique images as child
6 erotica, and 25 unique videos as child erotica. In November 2022,
7 these 850 images and 134 videos were submitted to NCMEC so that NCMEC
8 could identify whether any of the children in the images and videos
9 were from a known series.² NCMEC responded that approximately 282 of
10 the files appeared to depict at least one actual child that had
11 previously been identified by law enforcement. The charges in this
12 case are based on the content of defendant's email account.

13 **3. Search of Defendant's Home Led to Seizure and**
14 **Forfeiture of Digital Devices**

15 In June 2015, HSI agents, along with Los Angeles Police
16 Department officers, searched defendant's home pursuant to a federal
17 search warrant. Case No. 15-MJ-1060. In a brief interview,
18 defendant admitted that he used the badherb51@hotmail.com email
19 address. Relevant here, HSI agents seized and imaged a cell phone
20 and a laptop that belonged to defendant (collectively, the "digital
21 devices").

22 In August 2015, defendant was notified that his digital devices
23 were subject to civil forfeiture consistent with U.S. Customs and
24 Border Protection's ("CBP") administrative forfeiture policy.
25 Defendant submitted a petition seeking relief from seizure of the
26

27 ² A "known series" refers to a child pornography series with
28 which law enforcement is familiar and has seen in the course of
casework.

1 property and requested that CBP consider his petition
2 administratively. In his petition, defendant acknowledged that he
3 was giving up his right to have the case immediately referred to the
4 U.S. Attorney for court action. In September 2015, CBP informed
5 defendant that his request for relief was denied. Defendant filed no
6 supplemental petitions and the forfeiture was complete in January
7 2016. Because those digital devices were forfeited, the government
8 was lawfully permitted to retain them.

9 When the case was re-assigned to Agent Baker after Agent
10 Sampson's departure, Agent Baker similarly attested to the Court
11 that, based on the analysis of an HSI CFA, the digital device
12 evidence extractions from 2015 appeared to be in the same condition
13 and obtained a new federal search warrant to review the digital
14 device evidence. Case No. 20-MJ-02510. However, with respect to
15 those digital devices, Agent Baker explained that there appeared to
16 be no documented progress made by Agent Sampson regarding her review.
17 After obtaining a new warrant, Agent Baker independently reviewed the
18 digital devices, but found no child pornography or child erotica
19 images or videos. The government does not intend to use any evidence
20 from these digital devices at trial.

21 **B. Procedural Background**

22 **1. Defendant Was Charged by State Authorities**

23 Based on Agent Baker's review of defendant's
24 badherb51@hotmail.com email address, on or about November 2020, the
25 case was presented, but declined for federal prosecution by the
26 United States Attorney's Office for reasons unrelated to the
27 investigation of the case. The state charged and arrested defendant
28 in March 2021 for possession of child pornography, in violation of

1 California Penal Code § 311. LASC Case No. KA126846. The case was
2 called for preliminary hearing on September 1, 2022 and trailed to
3 September 22, 2022.

4 **2. Defendant's Case Was Adopted Federally and Government**
5 **Produced Significant Discovery**

6 The federal Indictment in this case was filed on September 21,
7 2022. Dkt. 1. Defendant first appeared before a judicial officer of
8 the court in which the charges in this case were pending on September
9 28, 2022, and was released on bond pending trial. Dkts. 6,8.
10 Defendant was charged with five counts for distribution and receipt
11 of child pornography, in violation of 18 U.S.C. §§
12 2252A(a)(2)(A), (b)(1), and possession of child pornography, in
13 violation of 18 U.S.C. §§ 2252A(a)(5)(B), (b)(2). The federal charges
14 are based exclusively on child pornography found in defendant's
15 badherb51@hotmail.com email address, and from Agent Baker's review of
16 those emails in 2020. Each of the files charged in the indictment
17 were also verified as known child pornography images by NCMEC.

18 The government has produced more than 1,000 pages of discovery,
19 including the NCMEC Cyber Tip and other NCMEC reports, preservation
20 requests and search warrants, audio and video recordings of
21 interviews, law enforcement reports, surveillance and search warrant
22 photographs, chain of custody documentation, forensic examination
23 reports, and correspondence between defendant and CBP regarding
24 forfeiture of defendant's digital devices. The government made its
25 initial discovery production on October 6, 2022 and has continued to
26 supplement its discovery, as appropriate, including in response to
27 defendant's supplemental discovery requests. The government has also
28

1 made available for review the contents of defendant's
2 badherb51@hotmail.com email and digital devices.

3 **3. Defendant Filed Motion to Compel Charging Information**

4 In March 2023, defendant sent the government a list of eleven
5 supplemental discovery requests.³ In response to those requests, the
6 government undertook a thorough review, produced additional
7 discoverable materials, and confirmed that it was aware of its
8 discovery obligations under Brady v. Maryland, 373 U.S. 83 (1963),
9 Giglio v. United States, 405 U.S. 150 (1972), and its progeny, and
10 that it had complied with them.

11 Defendant filed his Motion to Compel the Production of Brady
12 Materials (Dkt. 29) ("Motion" or "Mot."), demanding that the
13 government turn over sensitive work product and other materials
14 relating to the deliberative process, namely, six broad categories of
15 information relating to the government's charging decision and
16 impeachment evidence relating to Agent Sampson. (Mot. at 1.)
17 Specifically, defendant seeks discovery related to: (1) the federal
18 government's initial decision not to prosecute defendant in November
19 2020; (2) communications between federal and state prosecutors about
20 the status of defendant's state prosecution; (3) the District
21 Attorney's office's inability to proceed with the state prosecution;
22 (4) the federal government's adoption of the state case in September
23 2022; (5) the impact of the federal indictment on defendant's state
24 case; and (6) the personnel file and any other Henthorn material
25 regarding Agent Sampson. (Mot. at 1.) In support of the Motion,
26

27
28 ³ The supplemental discovery requests encompassed the subject
matter of the first five requests in the Motion, as well as other
topics.

1 defendant filed a declaration under seal and in camera that has not
2 been shared with or viewed by the government. The Court set a
3 hearing on the motion for October 16, 2023. (Dkt. 32.)

4 **III. ARGUMENT**

5 The government has complied with its discovery obligations.
6 While the government has not seen and thus cannot respond to
7 allegations made in the in camera submission, the factual background
8 of this case shows that the stated bases for defendant's Motion are
9 (1) inaccurate and speculative, or (2) irrelevant to the substance of
10 the case. Defendant's Motion includes six separate categories of
11 discovery demands, all of which demand information traditionally
12 shielded from disclosure based on the work product and deliberative
13 process privileges. But the charging function is within the special
14 province and broad discretion of government prosecutors and removing
15 that protection would chill the exercise of prosecutorial discretion
16 that is the exclusive province of the Executive branch. Moreover,
17 for each of these demands, defendant has failed to articulate any
18 plausible factual basis to support how the information sought would
19 be favorable or why the information is in the government's
20 possession. The Ninth Circuit has explained that motions like
21 defendant's which put forth mere speculation to justify discovery
22 requests should be denied. Compelling disclosure of this protected,
23 sensitive information would have devastating effects on the ability
24 of prosecutors to freely and faithfully evaluate and discuss cases.

25 **A. Legal Standard**

26 "There is no general constitutional right to discovery in a
27 criminal case." Kaley v. United States, 571 U.S. 320, 335 (2014)
28 (quoting Weatherford v. Bursey, 429 U.S. 545, 559 (1977)). There are

1 two sources of the government's discovery obligations in a criminal
2 case that are relevant to the instant motion.

3 First, Rule 16 of the Federal Rules of Criminal Procedure
4 establishes guidelines for pretrial production by the government, as
5 well as reciprocal discovery by the defendant, of certain limited
6 material, including items "material to preparing the defense." Fed.
7 R. Crim. P. 16(a)(1)(E)(i). Under Rule 16(a)(1)(C), a defendant is
8 entitled to documents that she can show are material to the
9 preparation of her defense. Rule 16, however, expressly excludes the
10 "discovery or inspection of reports, memoranda, or other internal
11 government documents made by an attorney for the government or other
12 government agent in connection with investigating or prosecuting the
13 case." Fed. R. Crim. P. 16(a)(2). See also Rule 16 Advisory Comm.
14 Notes - 2013 Amendment ("a defendant's pretrial access to . . .
15 documents under Rule 16(a)(1)(E) remains subject to the limitations
16 imposed by Rule 16(a)(2)"); United States v. Fort, 472 F.3d 1106 (9th
17 Cir. 2007).

18 Second, under Brady v. Maryland, 373 U.S. 83, 87 (1963) and
19 Giglio v. United States, 405 U.S. 150, 154 (1972), the government
20 must turn over to the defense evidence in its possession that is
21 favorable to the defense and material either to guilty or punishment.
22 United States v. Bundy, 968 F.3d 1019, 1031 (9th Cir. 2020). In the
23 pretrial context, the government must disclose favorable information
24 in its possession, without attempting to predict whether disclosure
25 would be material to the outcome of trial. Id. at 1033. Material
26 can be favorable "either because it is exculpatory or impeaching."
27 Id. at 1031. But Brady, Giglio, and its progeny do not require the
28 government to disclose neutral, irrelevant, speculative, or

1 inculpatory evidence. See, e.g., United States v. Stinson, 647 F.3d
2 1196, 1208 (9th Cir. 2011).

3 And in a motion to compel Brady material, a defendant must
4 provide more than speculation that favorable information exists. A
5 defendant's allegation that the requested information might be
6 exculpatory does not entitle her to an unlimited or unsupervised
7 search of the government's files. See Pennsylvania v. Ritchie, 480
8 U.S. 39, 59 (1987). "It is the government, not the defendant or the
9 trial court, that decides prospectively what information, if any . .
10 . must be disclosed under Brady." United States v. Lucas, 841 F.3d
11 796, 807 (9th Cir. 2016). Short of "defense counsel becom[ing] aware
12 that ... exculpatory evidence was withheld and bring[ing] it to the
13 court's attention, the prosecutor's decision on disclosure is final."
14 Ritchie, 480 U.S. at 59. To "challenge the government's
15 representation that it lacks Brady information, [a defendant] must
16 either make a showing of materiality under Rule 16 or otherwise
17 demonstrate that the government improperly withheld favorable
18 evidence." Lucas, 841 F.3d at 808; see also id. ("Unless defense
19 counsel becomes aware that other exculpatory evidence was withheld
20 and brings it to the court's attention, the prosecutor's decision on
21 disclosure is final."). "[M]ere speculation about materials in the
22 government's files [does] not require the district court to make
23 those materials available, or mandate an in camera inspection."
24 United States v. Mincoff, 574 F.3d 1186, 1200 (9th Cir. 2009)
25 (quotations omitted). See also United States v. Lischewski, 2019 WL
26 2211328, *1-2 (N.D. Cal. May 22, 2019) (explaining that even without
27 looking to materiality, the defendant must show "more than mere
28 speculation that Brady material may exist").

B. Defendant's Requests Regarding Charging Decisions (Requests #1-5) are Speculative, Irrelevant, and Inaccurate

Defendant's first five requests pertain to federal and state prosecutors' charging decisions. As an initial matter, many of these internal deliberations are protected by the attorney work product and deliberative process privileges and are not discoverable. As many courts have recognized, protecting internal work product and deliberations from disclosure "encourages forthright and candid discussions of ideas and, therefore, improves the decisionmaking process." United States v. Fernandez, 231 F.3d 1240, 1246 (9th Cir. 2000). Moreover, Rule 16(a)(2) explicitly notes that Rule 16 does not authorize discovery of internal government documents made in connection with investigating or prosecuting the case. But even setting aside the fact that defendant's request seeks privileged information about its charging decisions, the government has re-reviewed the files in its possession in response to defendant's requests and confirmed that it has and will continue to comply with its discovery obligations under Brady, Giglio, and its progeny. Defendant's proffered bases for these requests are inaccurate, speculative, and irrelevant.

First, defendant attempts to paint the investigation as "mishandled," but this is inaccurate. Defendant says "two things are certain": that Agent Sampson did not timely complete her review of defendant's email data and that the government improperly retained defendant's devices for five years. (Mot. at 7.) But defendant bases the conclusion that Agent Sampson did not timely complete her review of defendant's badherb51@hotmail.com email data on two handwritten notes that lack context. Even if defendant is correct

1 that those notes pertain to June 19 and June 29, 2015 dates on which
2 Agent Sampson reviewed emails, that review was timely. The warrant
3 issued for the badherb51@hotmail.com email directed that the search
4 should be completed no later than 60 days from the date that the
5 response was received from Microsoft. Case No. 15-MJ-0469.
6 Microsoft returned records for the badherb51@hotmail.com email on May
7 22, 2015. In short, defendant's claim that it is "certain" Agent
8 Sampson exceeded the warrant deadline is inaccurate.

9 But more importantly, Agent Sampson no longer works at HSI Los
10 Angeles, the exact status of her review is unclear, and this case
11 turns on Agent Baker's 2020 review of the badherb51@hotmail.com email
12 data -- not Agent Sampson's review. Thus, any potential error by
13 Agent Sampson was remedied by the new 2020 federal warrant that
14 authorized review of the badherb51@hotmail.com email data by Agent
15 Baker after disclosing the unknown status of Agent Sampson's earlier
16 review.

17 Additionally, defendant's digital devices were forfeited in
18 2016, so defendant's suggestion that any devices were improperly
19 retained is misplaced.⁴

20 Second, relying on these inaccuracies, defendant's basis for
21 seeking to compel discovery is entirely speculative. Defendant
22

23 ⁴ Defendant argues that federal prosecutors would have been
24 concerned about investigative delays (Mot. at 7), but those
25 speculations are also inaccurate. The investigation in this case was
26 not completed until 2020 - when Agent Baker completed the review of
27 defendant's Microsoft data. See United States v. Lovasco, 431 U.S.
28 783 (1977) (holding that purely investigative delay is not
unconstitutional); United States v. Sherlock, 962 F.2d 1349, 1355
(9th Cir. 1989) (holding that ongoing investigation, the transfer of
agents working on the case, and other investigative needs were
legitimate reasons for delay). Defendant was indicted in 2022 soon
after the review was complete.

1 theorizes that federal prosecutors "would undoubtedly" be concerned
2 about the case, arguing that defendant's theory "seems entirely
3 plausible." (Mot. at 7-8.) Defendant's own argument concedes that
4 he is making "mere speculation about materials in the government's
5 files," Mincoff, 574 F.3d at 1199-2000, and he has not affirmatively
6 identified any exculpatory or impeachment evidence in the
7 government's possession.

8 At best, defendant says that "to the extent" the federal
9 government's declination was related to Agent Sampson, or "if"
10 federal prosecutors' communications pertained to Agent Sampson or
11 other investigation handling concerns, that information must be
12 produced. (Mot. at 8.) Despite defendant's pure speculation that
13 this material exists, the government has exceeded its discovery
14 obligation, re-reviewed its files, and confirmed that no such
15 documented concerns or communications exist. And, again, the charges
16 in this case are exclusively based on defendant's
17 badherb51@hotmail.com email data, Agent Baker's 2020 review of that
18 data pursuant to a federal warrant issued after Agent Sampson's
19 incomplete review was disclosed, and NCMEC's analysis of the child
20 pornography resulting from Agent Baker's review.

21 Third, cases from this circuit underline that defendant's
22 speculative basis for his discovery requests is insufficient and that
23 the Motion should be denied.

24 For example, in United States v. Mincoff, 574 F.3d at 1199, the
25 defendant was informed about a contradictory statement made by a
26 witness during FBI interviews. The defendant filed a motion for
27 Brady/Giglio material, requesting untruthful or incomplete
28 information or testimony and notes taken during FBI interviews. Id.

1 The Ninth Circuit affirmed denial of that request, explaining that,
2 aside from the single contradiction, defendant had not sufficiently
3 identified any potentially exculpatory evidence not disclosed to him.
4 Id. at 1200. It explained that defendant's "mere speculation about
5 materials in the government's files," did not require the court to
6 make those materials available or conduct an in camera review. Id.

7 In United States v. W.R. Grace, 401 F. Supp. 2d 1069, 1083 (D.
8 Mon. Nov. 23, 2005), the defendants sought documents showing that
9 W.R. Grace communicated potential dangers of a product to prospective
10 buyers. The defendants argued that, because the discovery included
11 one letter from W.R. Grace to a prospective buyer advising of risks,
12 that "one would expect to find," other examples of these advisements.
13 Id. The court denied defendants' request, explaining that
14 "[d]efendants' speculation as to the existence of other documents
15 showing notice to prospective buyers is insufficient to warrant an
16 order directing the prosecution to hunt for other examples 'one would
17 expect to find.'" Id. Rather, "[t]o merit discovery under Rule 16,
18 the defense must present 'facts which would tend to show that the
19 Government is in possession of information helpful to the defense.'"
20 The Court further explained that:

21 Neither a general description of the information sought nor
22 conclusory allegations of materiality suffice. The
23 government is subject to self-executing obligations under
24 Brady and discovery obligations triggered by valid requests
25 under Rule 16. The Court will not impose an additional burden
26 by compelling production of documents that may or may not
27 exist based on the speculative inferences of the defense.

28 Id. (cleaned up).

In both Mincoff and W.R. Grace, the moving party was made
aware of the existence of Brady/Giglio material, pointed to that

1 Brady/Giglio material in support of seeking additional similar
2 materials, but their requests were still denied because they
3 amounted to mere speculation about materials in the government's
4 files. Here, defendant's motion cites no actual evidence that
5 the materials sought exist and is based entirely on speculation.
6 The government has complied with its discovery obligations and
7 defendant has no reliable basis to assert that the government is
8 withholding favorable evidence. See also Ritchie, 480 U.S. at
9 58 n. 15 (explaining that defendant must establish a basis or
10 "some plausible showing" for claim that information would be
11 material).

12 **C. Defendant's Request Regarding Agent Sampson (Request #6) is**
13 **Irrelevant and Inaccurate**

14 As discussed above, defendant's request regarding Agent
15 Sampson's personnel file is based on unsupported assumptions and is
16 irrelevant because the charges are based on Agent Baker's 2020
17 review. But more importantly, Request #6 seeks impeachment
18 information. The government is only required to examine personnel
19 files of law enforcement officers it intends to call as witnesses at
20 trial. See United States v. Henthorn, 931 F.2d 29, 31 (9th Cir.
21 1991). This case is based on Agent Baker's investigation, and the
22 government does not currently intend to call Agent Sampson at trial.
23 Accordingly, because defendant's Request #6 appears directed solely
24 to information to be used for impeachment purposes, it should be
25 denied on that basis.

26 Should this case proceed to trial, the government will disclose
27 its witnesses pursuant to the Court's trial order and will fully
28 comply with its obligations under the Jencks Act, Giglio, and

1 Henthorn.

2 **IV. CONCLUSION**

3 For the foregoing reasons, the government respectfully requests
4 that this Court deny defendant's Motion.